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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CORE NUTRITIONALS, LLC,

Plaintiff,

v.

PERFORMANCE NUTRITION
FORMULATORS, LLC dba VMI
SPORTS and LONE STAR
DISTRIBUTION, LLC,

Defendants.

Case No. 2:16-cv-00705 TJH (AFMx)

**CONSENT JUDGMENT AND
PERMANENT INJUNCTION**

[JS-6]

Hon. Terry J. Hatter

1 WHEREAS, plaintiff Core Nutritionals, LLC ("Core Nutritionals"),
2 defendant Performance Nutrition Formulators, LLC dba VMI Sports ("VMI
3 Sports"), and defendant Lone Star Distribution, LLC ("Lone Star") have agreed in a
4 separate agreement to settlement of the matters in issue between them and to entry
5 of this Consent Judgment and Permanent Injunction, it is hereby ORDERED,
6 ADJUDGED, AND DECREED THAT:

7 1. This is an action for: (1) federal trademark infringement and federal
8 false designation of origin under the Trademark (Lanham) Act of 1946, as amended,
9 15 U.S.C. §1051, *et seq.*; (2) statutory unfair competition under California Business
10 and Professions Code §17200, *et seq.*; (3) common law trademark infringement; and
11 (4) common law unfair competition.

12 2. This Court has jurisdiction over all of the parties in this action and over
13 the subject matter in issue based on 28 U.S.C. §§1331, 1338(a), 1338(b), and
14 1367(a), as well as 15 U.S.C. §1121(a). This Court further has continuing
15 jurisdiction to enforce the terms and provisions of this Consent Judgment and
16 Permanent Injunction. Venue is also proper in this Court pursuant to 28 U.S.C.
17 §§1391(b) and 1391(c).

18 3. Core Nutritionals is a Virginia limited liability company, having its
19 principal place of business at 820 North Pollard Street RTL #3, Arlington, Virginia
20 22203.

21 4. VMI Sports is a Texas limited liability company having its principal
22 place of business at 3838 Oak Lawn Avenue, Suite No. 510, Dallas, Texas 75219.

23 5. Lone Star is a Delaware limited liability company having its
24 principal place of business at 807 Amblerwood Drive, Lucas, Texas 75002.

25 6. Core Nutritionals is the owner of all right, title, and interest in United
26 States Trademark Registration No. 4,341,175 ("the '175 trademark") for CRUSH IT!
27 for dietary and nutritional supplements, which is valid and enforceable. A copy of
28 this registration is attached hereto as **Exhibit 1**.

1 7. VMI Sports and Lone Star have advertised, marketed, promoted,
 2 distributed, offered for sale, and sold dietary and/or nutritional supplements using
 3 and/or bearing "KRUSH IT" in the United States (the "KRUSH IT supplements").
 4 Examples from VMI Sports' website (www.vmisports.com) and Instagram page
 5 (@vmisports) are attached hereto as **Exhibits 2 & 3**, respectively.

6 8. VMI Sports and Lone Star's advertising, marketing, promotion,
 7 distribution, offer for sale, and sale of the KRUSH IT supplements is likely to
 8 cause, and has caused, confusion, mistake, and deception among the consuming
 9 public in that it literally and/or colorably imitates the '175 trademark. It therefore
 10 constitutes infringement of the '175 trademark in violation of the Lanham Act, 15
 11 U.S.C. §1051, *et seq.*, to the substantial and irreparable injury of the public and of
 12 Core Nutritionals' business reputation and goodwill.

13 9. VMI Sports and Lone Star's advertising, marketing, promotion,
 14 distribution, offer for sale, and sale of the KRUSH IT supplements has also
 15 infringed on Core Nutritionals' federal and common law trademark rights in the
 16 '175 trademark in violation of Section 43(a) of the Lanham Act, 15 U.S.C.
 17 §1125(a), as such acts are likely to deceive, and have deceived, customers and
 18 prospective customers into believing that VMI Sports and Lone Star's KRUSH IT
 19 supplements are from, sponsored by, or affiliated with Core Nutritionals.

20 10. VMI Sports and Lone Star's advertising, marketing, promotion,
 21 distribution, offer for sale, and sale of the KRUSH IT supplements further
 22 constitutes statutory unfair competition in violation of California Business &
 23 Professions Code §17200, *et seq.*, common law trademark infringement, and
 24 common law unfair competition.

25 11. VMI Sports, Lone Star, their officers, their directors, their agents,
 26 their assigns, and all persons and/or entities acting for, with, by, though, and/or in
 27 concert and participation with them, or any of them, are hereby permanently
 28 enjoined from engaging in any of the following activities:

1 (a) manufacturing, advertising, marketing, promoting, distributing,
2 offering for sale, and/or selling the KRUSH IT supplements;

3 (b) manufacturing, advertising, marketing, promoting, distributing,
4 offering for sale, and/or selling supplements, namely dietary and nutritional
5 supplements, that infringe the '175 trademark;

6 (c) using "KRUSH IT" and/or any other mark or designation that is
7 a colorable imitation of, or is confusingly similar to, the '175 trademark in
8 connection with the manufacture, advertisement, marketing, promotion,
9 distribution, offer for sale, and/or sale of supplements, namely dietary and
10 nutritional supplements, or any other goods or services not originating from or
11 authorized by Core Nutritionals;

12 (d) using "KRUSH IT" and/or any other mark or designation that is
13 a colorable imitation of, or is confusingly similar to, the '175 trademark in any
14 manner likely to cause confusion, to cause mistake, or to deceive the consuming
15 public;

16 (e) representing in any manner, or by any method whatsoever, that
17 goods, services, or other products provided by VMI Sports and/or Lone Star are
18 sponsored by, approved by, authorized by, or originate from Core Nutritionals or
19 otherwise taking any action likely to cause confusion, mistake, or deception as to the
20 origin, approval, sponsorship, or certification of such goods or services;

21 (f) committing any acts calculated or likely to cause consumers to
22 believe that VMI Sports and/or Lone Star's products and/or services are Core
23 Nutritionals' products and/or services, or are authorized by Core Nutritionals
24 unless they are such; and

25 (g) unfairly competing with Core Nutritionals in any manner.

26 12. Service by first class mail upon VMI Sports and Lone Star, addressed
27 to Andrew S. Dallmann, 2603 Main Street, Suite 200, Irvine, California 92614 of a
28 copy of this Consent Judgment and Permanent Injunction entered by the Court is

1 deemed sufficient notice under Federal Rule of Civil Procedure 65. It shall not be
2 necessary for VMI Sports or Lone Star to sign any form of acknowledgement of
3 service.

4 13. The parties shall bear their own attorneys' fees and costs.

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6 **IT IS SO ORDERED:**

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9 Dated: March 24, 2017

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Hon. Terry J. Hatter, Jr.
United States District Judge

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